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No. 82-381.

In the Supreme Court of the United States

OCTOBER TERM, 1982

BETHLEHEM STEEL CORPORATION
AND
INSURANCE COMPANY OF NORTH AMERICA,
APPELLANTS,

v.

RHODE ISLAND TURNPIKE
AND BRIDGE AUTHORITY,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF RHODE ISLAND.

Appellants' Brief in Opposition to Appellee's Motion to Dismiss.

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October 6, 1982

ADDISON C. GETCHELL & SON, INC. - THE LAWYERS' PRINTER - BOSTON

Question Presented.

Whether retroactive application of Chapter 54, Section 1 of the 1981 Public Laws of Rhode Island (amending Rhode Island General Laws § 9-21-10), increasing the rate of prejudgment interest in civil actions, to a case (i) in which all trial proceedings, except the filing of the trial court's written decision, had terminated before the effective date of the statute, so that the statute's applicability turned solely on the happenstance that a decision was not made by the trial court before the statute's effective date, and (ii) with respect to which the essential issue of liability was finally resolved several years before the effective date of the statute, violates rights secured by the Contract Clause of Article I of the United States Constitution or the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Statement Pursuant to Rule 28.1.

Pursuant to Rule 28.1 of this Court's Rules, appellant Bethlehem Steel Corporation states that its subsidiaries and affiliates other than wholly-owned subsidiaries, are: Bethlehem Singapore Private Limited; Bethlehem Steel Italia S.p.A.; Pocono Fuels Company; Hibbing Taconite Company; Caradco Corporation; Millhouse Industries, Inc.; Erie Mining Company; Erie Mining Company, A Limited Partnership; Erie Development Company; C & K/Bethlehem (Gas & Oil Joint Venture); Kirby/Bethlehem (Gas & Oil Joint Venture); Forest Oil/Bethlehem (Gas & Oil Joint Venture); Industria e Comercio de Minerios S.A.—Icomi (which in turn has more than 50 subsidiaries and affiliates); Iron Ore Company of Canada (which in turn has more than 10 subsidiaries); Itmann Coal Company; Kaycee Bentonite Partnership; Lamco Joint Venture; Mastic Inc.; Met-Mex Penoles, S.A. de C.V.; Penoles Metals & Chemicals, Inc.; Minera Apolo, S.A. de C.V.; Presque Isle Corporation; Restauradora de las Minas de Catorce, S.A. de C.V.; Sichon (Thailand) Limited; Thailand Offshore Joint Venture.

Appellant Insurance Company of North America states that it is a wholly-owned subsidiary of INA Financial Corporation, a wholly-owned subsidiary of INA Corporation which in turn is a wholly-owned subsidiary of CIGNA Corporation. Insurance Company of North America's subsidiaries (except thirty-three (33) wholly-owned subsidiaries) and affiliates (see 26 U.S.C. Sections 1501, 1502, 1504; Treas. Reg. Section 1.1502-1) are: Compagnie d'Assurances Colina S.A. (Ivory Coast); Compagnie Financiere INA (France); Compagnie Nouvelle d'Assurances (France); INA International Investors, Ltd. (Pennsylvania); La Nouvelle, S.A. (France); Paine Webber Incorporated (Delaware) and its seventy-four (74) subsidiaries and affiliates; and Societe Civile Immobiliere Turina (France).

In addition to the foregoing, the parent companies Insurance Company of North America have varying ownership interests in over three hundred and seventy-six (376) other insurance, insurance-related, health care, real estate, and investment companies, both domestic and foreign, including Connecticut General Corporation and its subsidiaries and affiliates. Should the Court desire listings of these companies, and of the subsidiaries and affiliates of Paine Webber Incorporated, Insurance Company of North America will supplement its listing.

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Statement of the Case.

Appellants' Statement of the Case is contained in the Jurisdictional Statement filed September 2, 1982. It its Motion to Dismiss filed September 27, 1982, Appellee has noted its substantial agreement with the statement of the case contained in the Jurisdictional Statement.

Argument.

I. APPELLEE HAS IGNORED THE KEY ISSUE PRESENTED BY THIS APPEAL.

The key issue presented by this appeal is whether there is a violation of the Due Process Clause of the United States Constitution when a state law increasing the rate of prejudgment

interest in civil actions is applied in a case in which all trial court proceedings (other than the rendering of a decision) had terminated prior to the law's effective date, such that the law's applicability turned on the speed with which the trial judge was able to make a decision. As explained in the Jurisdictional Statement, the judgment entered against appellants was increased by nearly one million dollars by virtue of the fact that the trial judge did not make a decision within forty-one days after the conclusion of trial court proceedings. It is this peculiar caprice of the judgment appealed from that is the critical element of this appeal. Yet the appellee has entirely ignored this issue in its Motion to Dismiss, choosing instead to discuss decisions that clearly did not involve the precise issue presented by this appeal.

II. There Is No Adequate Non-Federal Basis for the Judgment Appealed From.

In the second portion of its Motion to Dismiss, appellee argues that the judgment from which this appeal is taken rests on an adequate non-federal basis because the Rhode Island statute imposing prejudgment interest in civil cases has been interpreted to apply retroactively. Again, none of the decisions cited by appellant involve application of a change in the prejudgment interest statute to a case in which all trial proceedings were concluded before the effective date of the change in the law. Moreover, none of the cited decisions provide an adequate, independent non-federal basis for the judgment from which this appeal is taken. Appellee appears to suggest that the Supreme Court of Rhode Island's interpretation of the statute as a matter of state law shields the statute as so interpreted from constitutional attack. The doctrine that the Supreme Court will not review a decision of a state court that rests upon an adequate and independent state ground, however, applies only when the state ground

would support the state court's decision regardless of the outcome of the federal claim. *See, e.g., Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977). This doctrine obviously has no application here; if the prejudgment interest statute as applied by the courts below violated the Due Process Clause of the United States Constitution, the judgment below would not remain intact by virtue of decisions construing the statute to apply retroactively.

Conclusion.

For these reasons, this Court should deny appellee's motion to dismiss and should note probable jurisdiction of this appeal.

Respectfully submitted,

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